RESALE

Resale is one of three routes by which competing carriers such as WorldCom may enter into the local telecommunications markets, and is "an important entry strategy both in the short term for many new entrants as they build out their own facilities and for small businesses that cannot afford to compete in the local exchange market by purchasing unbundled elements or by building their own networks." Local Competition Order ¶ 32; see also id. ¶ 12. Accordingly, the 1996 Act requires requires local exchange carriers such as Verizon to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. § 251(c)(4). In addition, the Act requires Verizon to allow resale of those telecommunications services on reasonable, nondiscriminatory terms. 47 U.S.C. §§ 251(b)(1), (c)(4); see also 47 C.F.R. § 51.604(a). Finally, FCC regulations require Verizon to provide resale services "that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users." Detailed provisions setting forth Verizon's resale obligations and the terms on which resale will be offered are necessary to ensure that this path of entry remains open and available to WorldCom.

Issue IV-38: Should the Interconnection Agreement contain provisions which list specific requirements for various services available for resale such as Centrex, Federal and State Programs, N11 Service, Grandfathered Services, Contract Service Arrangements, Special Arrangements, and Promotions, VoiceMail Service, Hospitality Service, and Telephone Line Number Calling Cards?

See discussion of relevant authority, supra.

Issue IV-39: Should the Interconnection Agreement include provisions requiring Verizon to make available for resale any Telecommunications Service that Verizon currently provides or may offer hereafter, on terms that are reasonable and non-discriminatory, including services that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that Verizon provides itself, including its end-users?

WorldCom's proposed term directly effectuates the Act's requirement that Verizon offer telecommunications services for resale on nondiscriminatory terms, see 47 U.S.C. §§ 251(b)(1), (c)(4), and the similar requirement codified at 47 C.F.R. §§ 51.603(a) & (b).

Issue IV-40: Should the Interconnection Agreement include a provision specifying that the naming of services which Verizon shall make available for resale in the Interconnection Agreement is neither all inclusive nor exclusive and that all telecommunications services which are to be offered for resale are subject to the terms of the Interconnection Agreement?

This provision is consistent with the requirement that Verizon make all services available for resale. See 47 U.S.C. § 251(c)(4).

Issue IV-41: Should the Interconnection Agreement contain provisions which place restrictions on WorldCom's right to purchase services, in accordance with law, under the Agreement for resale?

WorldCom's proposal is consistent with the Local Competition Order's provisions regarding restrictions on the right to purchase services. See Local Competition Order ¶¶ 873-874 (concluding that exchange access services are not subject to the Act's resale requirements).

Issue IV-42: Should the Interconnection Agreement contain provisions describing processes used by Verizon to inform WorldCom of special reduced charge programs for the handicapped, indigent, etc., participated in by migrating customers and processes for the handling of law enforcement and service annoyance calls?

See discussion of relevant authority at p. 45, supra.

SECURITY REQUIREMENTS

Several disputed issues concern the terms and conditions that will govern security requirements. The 1996 Act expressly grants state commissions (or this Commission, if it as acting as an arbitrator) the authority to resolve these issues, specifically directing a commission to "resolve each issue set forth in the petition [for arbitration of disputed issues]. . . by imposing appropriate conditions as required to implement subsection (c) of this section." 47 U.S.C. § 252(b)(4)(C) (emphasis added). As this Commission has recognized, commissions will often be called upon to "define specific terms and conditions governing access to unbundled elements," and make "critical decisions concerning a host of issues." Local Competition Order ¶¶ 135, 137. The Act and the Local Competition Order make clear that commissions have both the authority, and the duty, to do so.

Adequate security arrangements are necessary to ensure that each party's property is protected, and that WorldCom obtains the just, reasonable, and non-discriminatory interconnection, services, and access to network elements to which it is entitled pursuant to 47 U.S.C. § 201(b), § 202(a), § 251.

Issue IV-43: Should the ICA contain a provision setting forth security requirements for physical Collocation at Verizon's premises, requiring each Party to take reasonable steps to protect the other's personnel and property? More specifically, should that provision: (1) permit WorldCom to access only equipment owned by it and to enter only those areas of Verizon's premises where such equipment is located, require Verizon to maintain a log of its employees and agents that enter these areas, and require Verizon to allow WorldCom, after reasonable advance notice, to inspect areas that house or contain WorldCom equipment or equipment enclosures in accordance with mutually acceptable procedures; (2) obligate WorldCom to deliver to Verizon a list of employees and agents authorized to enter Verizon's premises and require such employees or agents to prominently display identification badges while on Verizon's premises; (3) require each Party, while on the other's premises or in areas on its premises designated solely for the other Party's use, to comply with the other's generally applicable security and safety procedures and requirements (provided that WorldCom's procedures and requirements for acts to its equipment areas are consistent with those established by Verizon for the relevant premise); (4) prohibit both Parties from tampering with or performing any activities upon the other's

equipment located on its premises, except as necessary to perform the ICA or in case of emergency, and set forth a procedure for such emergencies; (5) require WorldCom to adequately secure the areas that house its equipment to prevent unauthorized entry, remove any liability from Verizon in that regard, and require WorldCom to provide Verizon with access to such areas; (6) require prompt notification in case of breach of the security provisions; and (7) require WorldCom to ensure that its equipment is suitable for use in the operational environment, and remove liability from Verizon in this regard, other than to maintain the general environmental conditions in the premises at normal operational levels suitable for its own equipment?

See discussion of relevant authority at p. 47, supra.

Issue IV-44: Should the ICA contain a system security provision which would: (1) require each Party to provide the other a back-up and recovery plan to be used in the event of a system failure or emergency to facilitate prompt systems restoration and recovery; (2) require each Party to reasonably cooperate to determine which systems require disaster, restoration and recovery plans, and to provide such plans if necessary; and (3) require each Party to maintain a reasonable standard of security between operation system interfaces consistent with its own information security practices?

See discussion of relevant authority at p. 47, supra.

Issue IV-45: Should the ICA contain a fraud prevention provision that: (1) requires each Party to make available to the other fraud prevention features that may be embedded within any of the Network Elements; (2) makes clear that uncollectible or unbillable revenues from fraud and resulting from, but not confined to provisioning, maintenance, or signal network routing errors shall be the responsibility of the Party causing the error; and (3) states that neither Party is liable to the other for any fraud incurred in connection with service offerings, but that each Party must indemnify and hold each other harmless for any losses payable to IXC carriers caused by "clip-on" fraud incurred as a result of unauthorized access to an indemnifying Party's Service Area Concept (provided that the indemnifying Party shall control all negotiations and settlements of such claims with the applicable IXC carriers)?

See discussion of relevant authority at p. 47, supra.

Issue IV-45 : Should the ICA contain a law enforcement interface provision that requires each Party to provide reasonable assistance to the other in accordance with Applicable Law and the Party's internal procedures in connection with: installation of an information retrieval from traps in its network, emergency traces on and information retrieval from subscriber invoked CLASS services, and execution of wiretap or dialed number recorder orders from law enforcement authorities?

See discussion of relevant authority at p. 47, supra.

BUSINESS PROCESS REQUIREMENTS

A number of disputed issues address critical business process requirements. These requirements are necessary to ensure that processes are in place that allow WorldCom to interconnect, access the unbundled network elements and obtain those services for resale to which it is entitled under the Act. See 47 U.S.C. § 251(c). A number of these conditions relate to OSS. As this Commission has recognized, "carriers [would be] impaired without access to the incumbent LEC's OSS as an unbundled network element. The record demonstrates that, in general, lack of access to OSS as an unbundled network element materially diminishes a requesting carrier's ability to provide the services it seeks to offer." UNE Remand Order ¶ 424. OSS is a critical element, consisting of "pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. OSS includes the manual, computerized, and automated systems, together with associated business processes and the up-to-date data maintained in those systems." Id. ¶ 425 (citations omitted). Also, binding FCC regulations make clear that Verizon's duty to provide "nondiscriminatory access to network elements" includes a duty to provide adequate access to OSS. See AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 366, 734 (1999); Iowa Utils. Bd. v. FCC, 120 F.3d 753, 808-10 (8th Cir. 1997); 47 C.F.R. § 51.319.

The 1996 Act expressly grants state commissions (or this Commission, if it as acting as an arbitrator) the authority to resolve issues such as those presented in this section, specifically directing a commission to "resolve each issue set forth in the petition [for arbitration of disputed issues]. . . by imposing appropriate conditions as required to implement subsection (c) of this section." 47 U.S.C. § 252(b)(4)(C) (emphasis added). Indeed, this Commission has specifically directed commissions arbitrating Interconnection Agreements to "resolv[e] disputes concerning

access to OSS functions as unbundled network elements." See, e.g., UNE Remand Order ¶ 437. The Act and the Local Competition Order thus make clear that it is particularly critical that these business process issues be resolved and incorporated into the Interconnection Agreement.

Issue IV-47: Should the Interconnection Agreement contain provisions setting forth the terms and conditions that apply to the parties' contact with each other's subscribers?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-48: Should the Interconnection Agreement contain provisions requiring the parties to use escalation and work center interface procedures and subscriber contact information that will govern the parties' interactions with each other?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-49: Should the Interconnection Agreement contain a provision requiring Verizon to notify WorldCom of any proposed changes to Verizon's retail service offerings?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-50: Should the Interconnection Agreement contain provisions setting forth requirements on the parties regarding Essential Services and Deaf and Disabled Services?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-51: Should the Interconnection Agreement require that the application-to-application OSS interfaces deployed by Verizon to comply with industry standards?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-52: Should the Interconnection Agreement contain provisions setting forth change management and control procedures?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-53: Should the Interconnection Agreement contain a provision requiring Verizon to provide preordering, ordering, and provisioning business support to WorldCom at parity with what Verizon provides to itself?

See discussion of relevant authority at pp. 49-50, supra. Moreover, Verizon is required by § 251(c)(3) of the Act and to provide nondiscriminatory access to OSS, which includes reordering, ordering and provisioning. See 47 C.F.R. § 51.319(g).

Issue IV-54: Should the Interconnection Agreement contain provisions setting forth requirements for Verizon to maintain a Help Desk/Single Point of Contact ("SPOC")?

See discussion of relevant authority at pp. 49-50, supra.

Issue 55: Should the Interconnection Agreement contain a provision requiring Verizon to support all pre-ordering, ordering and provisioning order types and functions as required by OBF guidelines and business rule and as they exist on the Effective Date of this Agreement?

See discussion of relevant authority at pp. 49-50, supra. This requirement is consistent with the requirement that Verizon provide non-discriminatory access to OSS, see 47 U.S.C. § 251(c); 47 C.F.R. § 51.319(g), and with BA/GTE Merger Order Appendix D, ¶ 18.

Issue IV-56: Should the Interconnection Agreement contain provisions requiring Verizon to participate in the National Consumers Telecommunications Data Exchange ("NCTDE") for exchange of information on subscribers' payment history?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-57: Should the Interconnection Agreement contain a provision requiring Verizon to provide WorldCom with the capability to order local service, intraLATA and interLATA service on behalf of WorldCom's subscriber on one single order according to OBF guidelines?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-58: Should the Interconnection Agreement contain provisions setting forth requirements for Number Administration and Number Reservations?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-59: Should Verizon be required to provide WorldCom with electronic copies of their Universal Service Order Codes ("USOCs"), their corresponding alpha-numeric descriptions, and Feature Identifications ("FIDs")?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-60: Should the Interconnection Agreement require Verizon to provide blocking services at the request of WorldCom?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-61: Should the Interconnection Agreement contain provisions regarding compliance with Ordering Billing Forum ("OBF") guidelines and processes to follow to obtain Verizon's business rules and processes?

See discussion of relevant authority at pp. 49-50, supra. This provision is also consistent with the Bell Atlantic-GTE Merger Order. See id., Appendix D, ¶18.

Issue IV-62: Should the Interconnection Agreement contain provisions protecting WorldCom's subscribers from premature disconnects when their service is changed from Verizon to WorldCom and preventing a party from requiring a "disconnect" order before allowing a subscriber to change service?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-63: Should the Interconnection Agreement contain provisions setting forth the coordinated cut-over process?

See discussion of relevant authority at pp. 49-50, supra.

Issue III-16: Should the Interconnection Agreement address transfer of service announcements for when a subscriber changes service to another carrier and does not retain their prior telephone number?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-64: Should the Interconnection Agreement contain provisions allowing WorldCom as the purchaser of services to request a due date for provision of service by Verizon that is within agree to intervals and to request and pay for expedited service on a reasonable basis?

See discussion of relevant authority at pp. 49-50, supra. These provisions also require that any special or preferred scheduling options be available for WorldCom to the extent they are available for Verizon (i.e., parity). This nondiscriminatory access to OSS is required under § 251(c)(3) of the Act and the Local Competition Order.

Issue IV-65: Should the Interconnection Agreement contain provisions regarding subscriber premises inspections?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-66: Should the Interconnection Agreement contain provisions regarding Firm Order Confirmations ("FOCs")?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-67: Should Verizon be required to provide detailed explanations for both manual and automated order rejections?

See discussion of relevant authority at pp. 49-50, supra. This provision is consistent with the Bell-Atlantic GTE Merger Order. See id., Appendix D, ¶18.

Issue IV-68: Should the Interconnection Agreement contain provisions regarding Service Order Changes?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-69: Should Verizon be required to provide the reason why orders cannot be completed on time, and coordinate a new date for completion when order due dates are changed?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-70: Should the Interconnection Agreement require loss notification notices and provisioning and billing completion notices to be sent by Verizon?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-71: Should the Interconnection Agreement contain provisions regarding ordering Network Elements individually and in Technically Feasible Combinations?

See discussion of relevant authority at pp. 49-50, supra; see also discussion of relevant authority at pp. 21-23, supra.

Issue IV-72: Should the Interconnection Agreement set forth the requirements for application-to-application OSS interfaces that will be used by the parties?

See discussion of relevant authority at pp. 49-50, supra. These provisions incorporate by reference the Verizon/WorldCom Uniform Interfaces Settlement Agreement under which Verizon is obligated to provide EDI interfaces for several different functions. This came about as a result of a settlement between Verizon, WorldCom and AT&T dated August 20, 1999.

Issue IV-73: Should the Interconnection Agreement set forth the requirements for ordering and provisioning for resale services and network elements?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-74: Should the Interconnection Agreement set forth the requirements for interim and standard billing, and collocation billing arrangements between the parties?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-75: Should the interconnection agreement include provisions regarding payment of access charges under interim number portability arrangements?

See discussion of relevant authority at pp. 49-50, supra. These provisions incorporate and encapsulate the terms and conditions of a letter agreement between the parties where the parties settled on a new process for settling access charge payments under interim number portability arrangements. This letter agreement was entered into by on the parties on July 7, 1999 in response to the FCC's Number Portability Order ¶ 140, and its terms and conditions should be incorporated into the interconnection agreement.

Issue IV-76: Should the Interconnection Agreement set forth the requirements for billing format, manner of payment, billing disputes, and billing formats?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-77: Should the Interconnection Agreement contain terms and conditions for Verizon's provision of Recorded Usage Data ("RUD") to WorldCom in connection with the provision to WorldCom of Verizon's switch-based services?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-78: Should the Interconnection Agreement contain provisions regarding the terms and conditions surrounding repair, maintenance, testing and surveillance for services purchased under the agreement?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-79: Should the Interconnection Agreement contain provisions regarding 911 and E911 requirements?

See discussion of relevant authority at pp. 49-50, supra.

Issue IV-80: Should the Interconnection Agreement contain provisions regarding Directory Assistance Service?

See discussion of relevant authority at pp. 49-50, supra. Directory assistance is a network element that incumbent LECs are required to provide on a just, reasonable, and nondiscriminatory basis. See 47 U.S.C. § 251(c); 47 C.F.R. § 51.319(f).

Issue IV-81: Should the Interconnection Agreement contain provisions regarding Operator Services ("OS")?

See discussion of relevant authority at pp. 49-50, supra. Operator services is a network element that incumbent LECs are required to provide on a just, reasonable, and nondiscriminatory basis. See 47 U.S.C. § 251(c); 47 C.F.R. § 51.319(f).

Issue IV-82: Should the Interconnection Agreement contain provisions regarding Directory Assistance, Listings Service Requests and Directory Assistance data?

See discussion of relevant authority at pp. 49-50, supra. Directory assistance is a network element that incumbent LECs are required to provide on a just, reasonable, and nondiscriminatory basis. See 47 U.S.C. § 251(c); 47 C.F.R. § 51.319(f); see also Local Competition Order ¶¶ 534, 538.

Issue I-8: May Verizon monitor WorldCom's access to and use of customer proprietary network information made available to WorldCom?

Section 222 of the Act sets forth requirements regarding the use of customer proprietary network information by carriers. These statutory requirements apply to WorldCom as they do to all carriers. Verizon has proposed contract language permitting it to monitor WorldCom's access to and use of CPNI. But Verizon has not been granted authority under the Act, and has no responsibility, to monitor WorldCom's compliance with these requirements.

Issue I-11: May Verizon summarily and unilaterally terminate WorldCom's access to the OSS unbundled network element?

See discussion of relevant authority at pp. 49-50, supra.

TERMS AND CONDITIONS

A large number of disputed issues address more general commercial terms and conditions, as opposed to those terms and conditions that are more closely tied to the specific requirements of the Act. The 1996 Act expressly grants state commissions (or this Commission, if it as acting as an arbitrator) the authority to resolve these issues, specifically directing a commission to "resolve each issue set forth in the petition [for arbitration of disputed issues]. . . by imposing appropriate conditions as required to implement subsection (c) of this section." 47 U.S.C. § 252(b)(4)(C) (emphasis added). This broad grant of authority is critical given the context in which these arbitrations occur. The parties are not in the typical commercial situation where both parties see their agreement as a benefit. Instead, a new entrant is seeking an agreement that will allow it to enter what has previously been a monopoly market, with an incumbent that has every incentive to preserve its monopoly and avoid any obligations that the interconnection agreement might create. Thus, commissions will often be called upon to "define specific terms and conditions governing access to unbundled elements," and make "critical decisions concerning a host of issues." Local Competition Order ¶¶ 135, 137. The Act and the Local Competition Order make clear that commissions have both the authority, and the duty, to do so.

As the Act makes clear, the negotiation and arbitration process is to result in an agreement between the parties. See 47 U.S.C. § 252. Such a contract requires the establishment of basic terms and conditions. Absent such terms and conditions, it is virtually certain that the parties will find themselves embroiled in disputes about otherwise routine matters, such as the term of the agreement, the law governing the agreement, and the appropriate means of resolving such disputes as they arise. Without the inclusion of some of the terms and conditions requested,

it is conceivable that the parties will find themselves unable to agree on the operation of key portions of the contract, and that this will result in WorldCom's inability to gain the interconnection or access the network elements it needs to do business in the Commonwealth of Virginia. For example, if the parties cannot reach agreement on effective date or when the contract should expire, they will not agree on when or for how long the incumbent LEC must provide the interconnection or network elements contemplated by other portions of the Agreement. That would create an intolerable amount of uncertainty for new entrants, and would violate the Act's requirements that new entrants obtain interconnection, unbundled access to network elements, and finished services at wholesale rates. See 47 U.S.C. § 251(c).

Issue I-10: Should the Interconnection Agreement contain a provision defining the term of the Interconnection Agreement (3 years from the Effective Date), and establishing a process for extending the term and effectiveness of the Interconnection Agreement pending creation of a superceding interconnection agreement?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-83: Should the Interconnection Agreement contain a provision defining the scope of the agreement, stating that the Interconnection Agreement specifies the rights and obligations of each Party with respect to the purchase and sale of Local Interconnection, Local Resale, Network Elements, and related services, and defining the subject matter content of each Part of the Interconnection Agreement?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV- 84: Should the Interconnection Agreement contain a provision: (1) obligating Verizon to provide services in any Technically Feasible combination requested by WorldCom (excepting Local Resale); (2) prohibiting either party from discontinuing or refusing to provide any service provided or required under the Interconnection Agreement (except in accordance with the terms of the Interconnection Agreement), without the other party's written agreement; and (3) prohibiting Verizon from altering its network without notice in a manner (i) inconsistent with the FCC's notice requirements and (ii) that would impair WorldCom's rights under the Interconnection Agreement?

See discussion of relevant authority at pp. 56-57, supra. In addition, as the Commission has recognized, 47 U.S.C. § 251(c) "imposes obligations on incumbent LECs in addition to the

obligations set forth in sections 251(a) and (b). It establishes obligations of incumbent LECs regarding: (1) good faith negotiation; (2) interconnection; (3) unbundling network elements; (4) resale; (5) providing notice of network changes; and (6) collocation." Local Competition Order ¶ 1241.

Issue IV-85: Should the Interconnection Agreement contain a provision stating that, in the event of a conflict between the rates and charges set forth in the Interconnection Agreement and those set forth in a Tariff, the Interconnection Agreement should control? Should that provision further provide that the Tariff and the Interconnection Agreement should be construed to avoid any conflicts, and that changes or modifications to Tariffs filed by one Party that materially and adversely alter the terms of the Interconnection Agreement shall be effective against the other Party only upon that Party's written consent, or upon an order of the Commission?

See discussion of relevant authority at pp. 56-57, supra. Moreover, any attempt by Verizon to circumvent the provisions of an interconnection agreement with terms filed in a tariff would violate the requirement that incumbent LECs such as Verizon negotiate in good faith, and enter into, binding agreements with CLECs that fulfill the duties set out in 47 U.S.C. §§ 251(b), (c).

Issue IV-86: Should the Interconnection Agreement contain a provision stating that (1) except as otherwise provided, the purchasing Party is authorized to use the services provided to it under the Interconnection Agreement in connection with other technically compatible services provided by the providing Party under the Interconnection Agreement, or with any services provided by the purchasing Party or third parties, but that (2) unless otherwise provided, interconnection services, call transport and termination services, and unbundled Network Elements shall be available under the terms and conditions (including prices) set forth in the Interconnection Agreement, and shall only be used for purposes consistent with the purchasing Party's obligations under the Act and any rules, regulations or orders thereunder?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-87: Should the Interconnection Agreement contain a provision stating that no provision of the Interconnection Agreement shall be deemed waived, amended, or modified by either Party unless such a waiver, amendment, or modification is in writing, dated, and signed by both Parties?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-88: Should the Interconnection Agreement contain a provision: (1) making assignments or delegations of Interconnection Agreement rights or obligations to any non-affiliated entity void, without prior written notice and consent, (2) requiring written notice of an assignment or delegation to an Affiliate, and (3) further setting forth the rights and obligations of the Parties upon a valid assignment or delegation?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-89: Should the Interconnection Agreement contain a provision governing audits and examinations that: (1) entitles each Party to audit the other Party's books, records and documents for the purpose of evaluating the accuracy of the other Party's bills and performance reports rendered under the Interconnection Agreement, and that states how often such audits may be performed; (2) states that a Party may employ others persons or firms to conduct the audit, and that the time and place of audits shall take place by agreement of the parties; (3) sets forth a procedure for correction by the audited party of any error revealed in the audit; (4) obligates each Party to cooperate fully in any audit; (5) places the cost of the audit on the auditing Party, but prohibits the audited Party from charging the auditing Party for reasonable access; (6) provides that information disclosed in an audit is deemed to be confidential information subject to the Interconnection Agreement's confidentiality restrictions; (7) provides for a limited survival period for audits following expiration or termination of the Interconnection Agreement?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-90: Should the Interconnection Agreement contain a provision governing the rights and remedies for billing disputes, including allocation of interest payments upon resolution of such disputes.

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-91: Should the Interconnection Agreement contain detailed provisions setting forth how branding will occur?

See discussion of relevant authority at pp. 56-57, supra. This is also consistent with this Commission's recognition in a closely related context that "[b]rand identification is likely to play a major role in markets where [new entrants] compete with incumbent LECs for the provision of local and toll service. This brand identification is critical to [new entrants'] attempts to compete with incumbent LECs and will minimize consumer confusion. Incumbent LECs are advantaged when [a new entrant's] end users are advised that the service is being provided by the [new entrant's] primary competitor." Local Competition Order ¶ 971.

Issue IV-92: Should the Interconnection Agreement contain a provision that makes clear that the Interconnection Agreement provisions governing branding shall not confer on either Party any rights to the service marks, trademarks and tradenames owned by or used in connection with services by the other Party or its Affiliates, except as expressly permitted by the branding provisions?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-93: Should the Interconnection Agreement contain a provision that requires Verizon technicians, when on a premise visit on behalf of WorldCom, to identify themselves as Verizon employees performing services on behalf of WorldCom? Should that provision also define the appropriate contents of a status card left by such a technician on a status visit (and include an Exhibit A that contains a representative sample) and prohibit such technicians from leaving any promotional or marketing literature for or otherwise market Verizon Telecommunications Services to the WorldCom customer (excepting a telephone number for customer service or sales)?

See discussion of relevant authority at pp. 56-57, supra. In addition, if Verizon were to solicit WorldCom's customers when on a premise visit on behalf of WorldCom, that would constitute unjust, unreasonable, and discriminatory behavior in violation of 47 U.S.C. § 201(b); id. § 202(a); and id. § 251. Section 201(b) of the Telecommunications Act prohibits unjust and unreasonable practices by telecommunications carriers. See 47 U.S.C. § 201(b). In pertinent part, Section 201(b) provides that "[a]ll . . . practices . . . in connection with . . . communication service shall be just and reasonable and any such . . . practice . . . that is unjust or unreasonable is hereby declared unlawful." Id. Section 201(b) is violated when a "practice" "in connection with . . . communication service" is unjust and/or unreasonable. See, e.g., Rainbow Program Order ¶¶ 15-25; Ascom Order ¶¶ 9-28; Bus. Dics. NOAL ¶¶ 29-36. Section 202(a) of the Telecommunications Act prohibits discriminatory or preferential practices by telecommunications carriers. See 47 U.S.C. § 202(a). That section provides that "[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in . . . practices . . or services for or in connection with like communication service." Id. Section 251 similarly mandates that the incumbents' practices be "just, reasonable, and nondiscriminatory."

47 U.S.C. §§ 251(c)(2)(D), (c)(3).

Issue IV-94 : Should the Interconnection Agreement contain a provision stating that the purchasing Party will pay charges in consideration for services, and incorporating by reference attachments setting forth charges and billing and payment procedures?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-95: Should the Interconnection Agreement contain a provision making each Party (subject to certain exceptions) responsible for all costs and expenses incurred in complying with its obligations under the Interconnection Agreement, and requiring each Party to undertake the technological measures necessary for such compliance?

See discussion of relevant authority at pp. 56-57, supra. This is also consistent with the Commission's recognition that "the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements."

Issue IV-96: Should the Interconnection Agreement contain a provision requiring each Party to comply with Applicable law, to obtain and keep in effect all regulatory approvals, and to reasonably cooperate in obtaining and maintaining such approvals? Should the provision further provide that the Interconnection Agreement shall survive, subject to other provisions of Part A, in the event that the Act or FCC rules and regulations applicable to the Interconnection Agreement are held invalid?

See discussion of relevant authority at pp. 56-57, supra. This is also consistent with the obligations imposed by 47 U.S.C. § 252(e), which requires the parties to submit agreements to the state commission for approval, and further requires the state commission to "approve or reject the agreement, with written findings as to any deficiencies."

Issue IV-97: Should the Interconnection Agreement contain a provision governing the parties' responsibilities with respect to confidential information? Specifically, should the Interconnection Agreement contain a provision that (1) defines the term confidential information; (2) specifies a method for identifying and designating confidential information; (3) states the obligations imposed upon the recipient of confidential information under the Interconnection Agreement; (4) provides for limited disclosure to third parties in certain circumstances; (5) limits reproduction of confidential information; (6) sets forth procedures for return of confidential information, loss of such information, and unauthorized disclosure; (7) provides certain exceptions from the confidentiality obligations imposed by the provision in the case, for example, of information publicly

available or legally compelled disclosure; (8) provides for survival of confidentiality obligations following expiration, cancellation or termination; (9) makes clear that disclosure to a Party does not affect property rights in the information; (10) provides for equitable relief, including injunctive relief and specific performance, for a breach of confidentiality; (11) makes clear that it provides additional confidentiality protections to those existing under Applicable Law; (12) sets forth obligations with respect to access, use, or disclosure of Customer Proprietary Network Information (CPNI) or other customer information; and (13) makes clear that it does not limit the rights of either Party with respect to its own subscriber information?

See discussion of relevant authority at pp. 56-57, supra. This is also consistent with Virginia law which recognizes the protectability of confidential business information. See e.g., Foti v. Cook, 220 Va. 800 (1980) (upholding contract term prohibiting disclosure of confidential information). This section also memoralizes 47 U.S.C. § 222, which governs the privacy of customer information. Although the 10th Circuit struck down the FCC's implementing regulations, see U S West, Inc. v. FCC, 182 F.3d 1224 (10th Cir. 1999). The requirements of the Act remain in effect and are binding. This section is also consistent with the D.C. Circuit's recent recognition that protecting consumer privacy is a "substantial" governmental interest. See Trans Union Corp. v. FTC, 2001 WL 363964 *8 (D.C. Cir. 2001).

Issue IV-98: Should Verizon be precluded from sharing WorldCom confidential information with Verizon's retail component?

See discussion of relevant authority at pp. 56-57, supra. In addition, if Verizon were to share WorldCom confidential information with Verizon's retail component, that would constitute unjust, unreasonable, and discriminatory behavior in violation of 47 U.S.C. § 201(b), § 202(9), and § 251.

Issue IV-99: Should the Interconnection Agreement contain a provision setting forth rules of construction applicable to the Interconnection Agreement terms and conditions?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-100: Should the Interconnection Agreement contain a dispute resolution provision that permits the Parties to submit to the Commission any dispute arising out of

the Interconnection Agreement that the Parties cannot resolve (assuming the Commission retains continuing jurisdiction to implement and enforce the terms and conditions of the Interconnection Agreement), and that sets forth the obligations of the Parties upon such submission?

See discussion of relevant authority at pp. 56-57, supra. This is also consistent with the Commission's prior conclusion that an aggrieved "party could file a section 208 complaint alleging that a common carrier is violating the terms of a negotiated or arbitrated agreement." Local Competition Order ¶ 127.

Issue IV-101: Should the parties be allowed to submit disputes under the agreement to binding arbitration under the United States Arbitration Act?

See discussion of relevant authority at pp. 56-57, supra. Although arbitration is not mandated by state or federal law, the validity and enforcement of agreements to arbitrate are governed by the United States (Federal) Arbitration Act, 9 U.S.C. § 1, et seq.

Issue IV-102: Should the Interconnection Agreement contain a provision stating that the Interconnection Agreement constitutes the entire agreement between the Parties on the subject matter of the Interconnection Agreement, and that it supersedes any prior or contemporaneous agreement, understanding, or representation on that subject matter?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-103: Should the Interconnection Agreement contain a provision governing liability for environmental contamination that: (1) states that neither Party shall be liable to the other for any costs whatsoever resulting from the other Party's violation of federal, state, or local environmental law; (2) requires each Party, upon request, to indemnify, defend, and hold harmless the other Party against all losses caused by the indemnifying Party's violation of environmental laws; (3) places limited obligations on WorldCom regarding compliance with asbestos-regulating laws when WorldCom engages in abatement activities or equipment placement activities resulting in the generation or placement of asbestos containing material; (4) makes clear that WorldCom has no additional legal responsibilities regarding asbestos containing material on Verizon property; and (5) obligates Verizon to notify WorldCom if Verizon undertakes any asbestos control or asbestos abatement activities that could affect WorldCom's equipment or operations?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-104: Should the Interconnection Agreement contain a provision obligating both parties in their performance of their obligations under the Interconnection Agreement to cooperate fully and act in good faith and consistently with the intent of the Act, and prohibiting either Party from unreasonably delaying, withholding, or conditioning any action it is required or permitted to take pursuant to the Interconnection Agreement?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-105: Should the Interconnection Agreement contain a provision stating that the Act and Virginia law govern the validity, construction, enforcement, and interpretation of the Interconnection Agreement, without regard to Virginia's conflict of laws rules?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-106: Should the Interconnection Agreement contain a provision under which each Party agrees to indemnify the other Party for certain specified liability arising from the Interconnection Agreement that is legally caused by the indemnifying Party? Should the provision also contain various procedures, including limiting conditions, regarding how indemnification is obtained, including notice, authority to defend, authority to settle, obligation to assert defenses in applicable Tariffs, and an obligation on the indemnified Party to offer reasonable cooperation and assistance?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-107: Should the Interconnection Agreement contain a provision regarding intellectual property rights stating that (1) any intellectual property originating from or developed by a Party remains in the exclusive ownership of that Party; and (2) the Interconnection Agreement does not grant either Party any form of license in the other Party's intellectual property (with the exception of certain limited use of licenses)?

See discussion of relevant authority at pp. 56-57, supra; see also discussion of relevant authority in response to Issue III-15, infra.

Issue III-15: Should the Interconnection Agreement contain a provision under which Verizon agrees to use its best efforts to negotiate rights for MCIm to use Verizon's network under the same licensing terms that Verizon's receives from its vendors? Should that provision require Verizon to indemnify WorldCom against third party intellectual property claims arising out of WorldCom's use of Verizon's network, in the event that Verizon fails to use its best efforts to negotiate such rights for MCIm? Should that provision also require Verizon to warrant that it will seek to ensure in its licensing agreements with third parties that WorldCom may use or interconnect with Verizon's network equipment or software? Should the provision contain additional clauses relating to Verizon's obligation to provide notice of third party intellectual property claims, Verizon's obligation to avoid such claims where possible, and WorldCom's reservation of rights to pursue certain remedies against Verizon?

See discussion of relevant authority at pp. 56-57, supra. Moreover, these changes are necessary to conform the contract language with both this Commission's recent Order, UNE Licensing Order, and the decision of United States Court of Appeals for the Fourth Circuit in AT&T Communications of Virginia, Inc. v. Bell Atlantic-Virginia, Inc., 197 F.3d 663 (4th Cir. 1999).

In its decision, the Court of Appeals, among other things, held that

> The Act imposes the duty on Bell Atlantic, as an incumbent LEC, to provide "access to network elements on an unbundled basis ... on rates, terms, and conditions that are just, reasonable and nondiscriminatory." "Nondiscriminatory," in turn, means access on the same terms and conditions that Bell Atlantic itself enjoys. The interconnection agreement approved by the SCC fails to satisfy this requirement in one respect: although it grants MCI access to Bell Atlantic's network, it discriminates because it does not provide MCI equal license to use the intellectual property embedded in that network.

Id. at 670 (citations omitted). In April 2000, this Commission made a similar finding, concluding that the "nondiscriminatory access" obligation in section 251(c)(3) requires incumbent LECs to use their best efforts to provide all features and functionalities of each unbundled network element they provide, including any associated intellectual property rights that are necessary for the requesting carrier to use the network element in the same manner as the incumbent LEC. UNE Licensing Order ¶ 9.

The Court of Appeals further held that the Act "requires Bell Atlantic to attempt to renegotiate its existing intellectual property licenses to cover use by MCI. AT&T Communications of Virginia, 197 F.3d at 671. In those negotiations, Bell Atlantic must exercise its best efforts to obtain licensing for CLECs on the terms that it has obtained for itself. The FCC went on to find that "the nondiscriminatory access obligation requires incumbent LECs to allocate any costs associated with acquiring the necessary intellectual property rights among all

requesting carriers, including themselves." Id.

The changes to Section 20.2 are intended to conform these sections to the requirements imposed by the Court of Appeals and the FCC, namely, that Verizon renegotiate its existing licenses; that it use its "best efforts" to ensure that such renegotiation results in WorldCom being able to use Verizon's network equipment or software without intellectual property right infringement; and that Verizon share the costs of such licensing among all carriers including itself.

Issue IV-108: Should the Interconnection Agreement contain a provision that prohibits either Party from publishing or using, absent agreement, the other Party's logo, trademark, or service mark in any product, service, advertisement, promotion, or any other publicity matter?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-109: Should the Interconnection Agreement contain a provision stating that the Interconnection Agreement is the joint work product of the representatives of the Parties, that it has been drafted in final form by one of them for convenience, and that no inferences designed to resolve ambiguity shall be drawn against either Party solely on the basis of authorship?

See discussion of relevant authority at pp. 56-57, supra. Absent such a provision, a party arbitrating a dispute might apply the general principle of law that ambiguities are to be resolved against the drafting party. Because the final agreement will be a document that is partially negotiated, and partially arbitrated, such an inference would be inappropriate here.

Issue IV-110: Should the Interconnection Agreement contain a provision that prohibits a providing Party from requiring the purchasing Party to produce a letter of authorization, disconnect order, or other writing, from the purchasing Party's subscriber as a pre-condition to processing an Order from the purchasing Party?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-111: Should the Interconnection Agreement contain a provision that requires Verizon to provide notices of network changes in compliance with Section 251(c)(5) of the Act and the FCC's implementing regulations?

See discussion of relevant authority at pp. 56-57, supra. As the Commission has recognized, 47 U.S.C. § 251(c) "imposes obligations on incumbent LECs in addition to the obligations set forth in sections 251(a) and (b). It establishes obligations of incumbent LECs regarding: (1) good faith negotiation; (2) interconnection; (3) unbundling network elements; (4) resale; (5) providing notice of network changes; and (6) collocation." Local Competition Order ¶ 1241.

Issue IV-112: Should the Interconnection Agreement contain a provision that obligates the Parties to submit promptly the Interconnection Agreement to the Commission and all other governmental entities from which regulatory approval is needed, and that obligates the Parties to negotiate promptly and in good faith such revisions as may reasonably be required to achieve regulatory approval?

See discussion of relevant authority at pp. 56-57, supra. This is also consistent with the obligations imposed by 47 U.S.C. § 252(e), which requires the parties to submit agreements to the state commission for approval, and further requires the state commission to "approve or reject the agreement, with written findings as to any deficiencies."

Issue IV-113: Should the Interconnection Agreement contain a provision obligating the Parties to negotiate promptly and in good faith to amend the Interconnection Agreement in the event that subsequent changes in the law render any provision of the Interconnection Agreement unlawful, or materially alters the obligation(s) to provide services, or the services themselves, embodied in the Interconnection Agreement?

See discussion of relevant authority at pp. 56-57, supra. This is also consistent with the FCC's holding in the Local Competition Order that interconnection agreements must be flexible enough to accommodate chanages in the legal and regulatory landscape. Moreover, binding federal law which requires the application, on a prospective basis, of even new constructions of law. See, e.g., Rivers v. Roadway Express, Inc., 511 U.S. 298, 312-13 (1994) (emphasis added); see also Landgraf v. USI Film Prods., 511 U.S. 244, 273 (1994); Harper v. Virginia Dep't of Taxation, 509 U.S. 86, 97 (1993); National Fuel Gas Supply Corp. v. FERC, 59 F.3d 1281, 1289

(D.C. Cir. 1995).

Issue IV-114: Should the Interconnection Agreement contain a provision stating the Parties' intention that any services requested by either Party relating to the subject matter of the Interconnection Agreement that is not offered under the Interconnection Agreement will be incorporated into the Interconnection Agreement by amendment upon agreement by the Parties?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-115: Should the Interconnection Agreement contain a provision requiring the Parties, when they submit the Interconnection Agreement to the Commission for approval, to request that the Commission approve the Interconnection Agreement and refrain from taking any action to change, suspend, or otherwise delay implementation? Should the provision also make each Party responsible for obtaining and keeping in effect all regulatory approvals that may be required in connection with the performance of its respective obligations under the Interconnection Agreement?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-116: Should the Interconnection Agreement contain a provision reserving the Parties' rights to legally challenge through the Section 252 appeal process any term or condition of the Interconnection Agreement established by order of the FCC or Commission?

See discussion of relevant authority at pp. 56-57, supra. This provision is also consistent with the requirements of 47 U.S.C. § 252(e)(6).

Issue IV-117: Should the Interconnection Agreement contain a provision that, except as otherwise expressly stated, places on each Party the legal responsibility and expense for obtaining all rights and privileges necessary for the Party to provide its services pursuant to the Interconnection Agreement?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-118: Should the Interconnection Agreement contain a provision making clear that each Party is an independent contractor with full control of and supervision over its own performance of obligations and its employment practices; that the Interconnection Agreement does not create any other legal relationship between the Parties, such as an agency or partnership relationship; and that the legal relationship formed is non-exclusive, preserving the right of each Party to provide services to, or purchase services from, other parties?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-119: Should the Interconnection Agreement contain a provision governing available remedies and that authorizes a Party to sue in equity for specific performance?

See discussion of relevant authority at pp. 56-57, supra. This is also consistent with the general rule that, "[a]lthough the granting of specific performance is not a matter of absolute right, '[w]hen the contract sought to be enforced . . . has been proven by competent and satisfactory evidence, and there is nothing to indicate that its enforcement would be inequitable to a defendant, but will work injury and damage to the other party if it should be refused, in the absence of fraud, misapprehension, or mistake, relief will be granted by specific enforcement.'" Chattin v. Chattin, 245 Va. 302, 307, 427 S.E.2d 347, 350 (1993), quoting Haythe v. May, 223 Va. 359, 361, 288 S.E.2d 487, 488 (1982).

Issue IV-120: Should the Interconnection Agreement contain a provision governing available remedies stating that the remedies specified in the Interconnection Agreement are cumulative and are not intended to be exclusive of other remedies available to the injured Party at law or equity? Should the provision also state the Parties' agreement that the self-executing remedies for performance standards failures are not inconsistent with any other available remedy and are intended, as a financial incentive to meet performance standards, to stand separate from other available remedies?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-121: Should the Interconnection Agreement contain a provision (1) requiring Verizon to provide services and perform under this Agreement in accordance with any performance standards, metrics, and self-executing remedies (a) set forth in the agreement and (b) established by the FCC, the Commission, and any governmental body of competent jurisdiction; and (2) incorporating those standards, metrics and remedies by reference into the Interconnection Agreement?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-122: Should the Interconnection Agreement contain a severability provision stating that, if any term, condition or provision of the Interconnection Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not invalidate the entire Interconnection Agreement (unless such construction would be unreasonable), that the Interconnection Agreement in that event would be construed as if it did not contain the invalid or unenforceable provision or provisions, and that the rights and obligations of each Party would be construed and enforced accordingly?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-123: Should the Interconnection Agreement contain a provision governing subcontracting, which makes clear that a Party remains responsible for its Interconnection Agreement obligations even when it subcontracts with another entity to perform those obligations, that the subcontracting Party is solely responsible for paying its subcontractors, and that no subcontractor shall be deemed a third party beneficiary under the Interconnection Agreement?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-124: Should the Interconnection Agreement contain a provision that authorizes a Party to fulfill its obligations under the Interconnection Agreement itself or through an Affiliate, but which states that use of an Affiliate does not affect a Party's liability or duty under the Interconnection Agreement?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-125: Should the Interconnection Agreement contain a provision that makes the agreement binding upon, and for the benefit of, the Parties and their respective successors and permitted assigns?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-126: Should the Interconnection Agreement contain a provision governing collection and payment of taxes imposed by taxing authorities on purchase of services under the Interconnection Agreement? Specifically, should such a provision: (1) set forth conditions for collection and remittance of taxes by the parties; (2) set forth procedures should the providing Party not submit timely bills for taxes to the purchasing Party (including a limitation that taxes may be assessed or paid within one year of a transaction); (3) set forth special procedures governing resale of services that would allow the party purchasing service to be exempt from tax; (4) set forth provision requiring the purchasing Party to indemnify the providing Party for any tax due on services purchased for resale; (5) obligate each Party to reasonably cooperate with the other in the event of an audit by a taxing authority; (6) set forth a definition of effective notice or communication for tax purposes, and identify designates for receipt of such notice or communication?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-127: Should the Interconnection Agreement contain a provision stating that the Interconnection Agreement is for the benefit of the Parties alone and that it does not create any third party beneficiaries?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-128: Should the Interconnection Agreement contain a provision stating that a Party's failure or delay in seeking to enforce the Interconnection Agreement, or to seek any remedy under it, is not to be construed as a waiver of the Party's rights under the Interconnection Agreement? Should the provision also state that any waiver by a Party of a default by the other Party shall not be deemed a waiver of any other default?

See discussion of relevant authority at pp. 56-57, supra.

Issue IV-129: Should the Interconnection Agreement contain a "Part B" that provides definitions of certain capitalized terms and words used throughout the Interconnection Agreement?

See discussion of relevant authority at pp. 56-57, supra.

PERFORMANCE METRICS AND REMEDIES

Issue IV-130: What are the appropriate performance reports, standards and benchmarks that should apply to Verizon services provided pursuant to the interconnection agreement?

Verizon must provide interconnection, unbundled elements, and services to WorldCom on terms and conditions that are just, reasonable, and nondiscriminatory. 47 U.S.C. § 251(c)(2)-(4). Bell Atlantic also must provide access, elements, and services that are at least equal in quality to those Bell Atlantic provides itself. 47 U.S.C. § 251(c)(2)(C); 47 C.F.R. §§ 51.313, 51.603. The reason for this requirement is obvious. Although WorldCom cannot serve its own local customers without relying on Verizon, WorldCom's customers rely on WorldCom for service quality. Thus, if Verizon provides WorldCom inferior service, WorldCom customers will experience this as inferior service provided by WorldCom and will switch back to Verizon. Competition will fail before it meaningfully begins. Bell Atlantic, of course, has every incentive for competition to fail in this way, and no incentive to ensure that MCI receives adequate service.

For this reason, this Commission has indicated that "proper performance measures . . . are a necessary prerequisite to demonstrating compliance with the Commission's 'nondiscrimination' and 'meaningful opportunity to compete standards.'" Mich 271 Order ¶ 204 (citing DoJ Mich. Eval. 3).[11]

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[11]In the Michigan Order, the FCC emphasized the findings of the Department of Justice that detailed performance measures and standards, including disaggregated data and "precise clarity" in definitions, are necessary to prevent ILECs from behaving in an anticompetitive manner, and to permit a determination of whether they are in compliance with the FCC's non-discrimination rules. Mich. 271 Order ¶¶ 205-206, 209.

As the Commission is aware, both before and particularly after Verizon's entry into the long distance market in New York, WorldCom and other CLECs experienced severe problems with the electronic notices due in conjunction with ordering and provisioning of local service, particularly the UNE platform. On March 9, 2000, BA-NY entered into a consent decree with the FCC designed to remedy these problems going forward, and agreed to pay up to $27 million in fines. See NY 271 Order. To ensure that this problem is not repeated in Virginia, WorldCom proposes new metrics covering the problem areas addressed in the FCC consent decree.

Issue III-14: What are the appropriate financial remedies that should apply to Verizon's provision of services pursuant to the interconnection agreement?

The Department of Justice has recognized the need to overcome an ILEC's natural incentives to hinder its competition after § 271 entry, and the corresponding need for effective remedies imposed by state commissions:

> Ordinarily, of course, we would not expect companies to assist competitors in taking away their customers. Thus, we believe that a successful Section 271 application must be premised on a system to measure wholesale performance effectively and to guard against any future deterioration in performance. A number of states have begun to set up such mechanisms, including provisions for liquidated damages, and we encourage more to do so.[12]

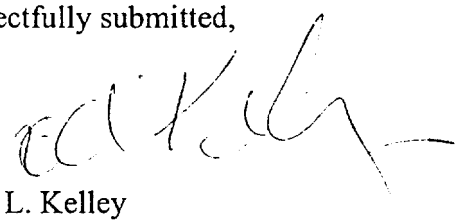
Performance reports, measurements, standards and remedies are intended to ensure that Verizon is providing a guaranteed level of service to new entrants, and to give Verizon the incentive to meet the required standards, or else suffer penalties. The FCC recognized that Bell Operating Companies must meet specific performance standards, not just provide reports of how Verizon is doing. Thus this Commission has concluded that "without enforcement mechanisms,

[12] Testimony of Assistant Attorney General Joel Klein before Congress, March 4, 1998.

reporting requirements are 'meaningless.'"[13] The FCC therefore emphasized the importance of adequate performance standards and remedies, not just performance reporting:

> The Commission will consider whether the BOC has agreed to performance monitoring and whether there are appropriate enforcement mechanisms that are sufficient to ensure compliance with established performance standards.[14]

Respectfully submitted,



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[13] BA/NYNEX Merger Order ¶ 208.

[14] Testimony of FCC Chairman William Kennard before Congress, March 4, 1998.

DOCKET NO. 00-218 Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.

o Microfilm, microform, certain photographs or videotape.

o Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician at the FCC Reference Information Center, at 445 12th Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

EXHIBITS A-F totaling approximately 2,500 pages